



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 9, 2015

Mr. Craig Franke
11715 Fox Road #400-202
Indianapolis, Indiana 46236

*Re: Formal Complaint 15-FC-194; Alleged Open Records Violation of The
Marion County Auditor's Office*

Dear Mr. Franke,

This advisory opinion is in response to your formal complaint alleging the Marion County Auditor's ("Auditor's Office"); violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Auditor's Office has responded to your complaint via Ms. Yoatonia Green, Tax Sale Specialist at the Marion County Auditor's Office. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 16, 2015.

BACKGROUND

You allege the Auditor's Office violated APRA by failing to respond to your request in within the allowed time of seven (7) days and that she took an unreasonable amount of time to give you documents you requested.

On May 29, 2015, you emailed Ms. Yoatonia Green your request and received an automated response that she was out of the office for a few days. The response also said to contact the Real Estate division for immediate assistance and gave their phone number. On June 5, you sent another email, and she then acknowledged your request after having just returned to the office.

You sent an additional email on June 10 complaining that the request was taking a long time. On June 16, Ms. Green emailed you the documents you requested from 2012, 2013 and 2014. The 2015 document you requested has not been created yet, and therefore the office does not have it in its possession.



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ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Marion County Auditor's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1).

After receipt of an email requesting documents, the public agency has seven days to respond, which was made by the Auditor's Office. Even if she had not, the automated message directed you to where you could get immediate assistance through other avenues.

The APRA provides that an agency has a reasonable amount of time to get the records requested after the initial acknowledgment of the request. You said that you have received similar records within 48 hours. Despite prior quick production, it took seven (7) business days from the acknowledgement response for you to get your records. This amount of time is not unreasonable, considering there are other office duties that must be accomplished. There is no expectation for immediate access – even when an agency sets a high bar in the past.

Furthermore, as for the 2015 records, a public agency is not required to create documents it does not have in order to fulfill a request. The agency cannot provide documents it does not possess.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Marion County Auditor's Office is not in violation of APRA.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.



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Cc: Yoatonia Green